

## REMARKS

Enclosed is a petition for an extension of time and the appropriate fee.

Claims 1-29 were previously elected with traverse. Claims 47-50 are newly added. Claims 1-29, 47-50, and non-elected (withdrawn) Claims 30-46 remain in this application.

The specification has been amended to correct typographical errors. No new matter has been added.

The drawings were objected to in the Office Action on the grounds that it appeared that in Figure 5 the reference numbers 89 and 91 were reversed based on the description in the specification. Applicant respectfully submits that both the specification and the drawing Figure 5 are correct, and that no drawing correction is needed based on the following remarks. The specification details a parallel description of corresponding structures including the reference numbers for the embodiments shown in Figures 3 and 5. In Figure 3, the receiving hopper 59 is shown on the right side of the figure and described in the specification (Specification page 9 ll. 5-6 and 14-15). In Figure 5, the receiving hopper 89 is shown on the right side of the figure and described in the specification (Specification page 10 ll. 4-6 and 10-11). Similarly, each structure discloses a discharge chute (57, 91) located on the opposite end of the conveyor. By inspection of both figures and the cited portions of the specification, Applicant respectfully submits that both descriptions correspond to an accurate description of the location of the named reference elements. Applicant respectfully requests this objection be withdrawn.

Claims 1-29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's alleged own admission (Figures 2 and 4) and in view U.S. Patent No. 4,776,449 ("Hoffmann") and further in view of U.S. Patent No. 4,345,680 ("Kay"). Applicant respectfully traverses and

submits that the references in any combination cannot be combined as suggested to achieve the claimed invention.

The Hoffmann reference is drawn to providing a stacker with a connecting conveyor that can selectively support the free end of a connecting conveyor by resting on either a delivering conveyor unit or a crawler-type vehicle (Hoffmann col. 1 ll. 29-34 and ll. 41-50). The connecting conveyor is primarily supported at a higher end by a swivel mounting on a super-structure assembly while the lower end of the connecting conveyor is supported by either the delivering conveyor unit, the crawler-type vehicle, or not supported at all during the transition from resting on the delivering conveyor unit and the crawler-type vehicle (Hoffmann Fig. 1, col. 1 ll. 23-26, and col. 2 ll. 16-18). Emphasis is placed upon the movability of a track-mounted roller-rocker assembly carrying a ball-type support on the underside of the connecting conveyor (Hoffmann col. 2 ll. 28-34). The ball-type support can rest in a corresponding recess formed in a support member of the delivering conveyor unit or formed on the top portion of the crawler-type vehicle (Hoffmann Fig. 1 and col. 2 ll. 49-56). When the ball-type support is mated with the delivering conveyor unit, a discharge drum roller of a tripper car dumps material from the chute of the delivering conveyor onto the chute of the connecting conveyor (Hoffmann Fig. 1 and col. 2 ll. 25-27). This mating of the delivery conveyor unit to the connecting conveyor unit allows either or both of the delivery conveyor unit and the connecting conveyor to move while maintaining the position of the discharge drum roller over the connecting conveyor chute (Hoffmann Fig. 1 and col. 1 ll. 20-22). A claimed advantage by Hoffmann is that only a single roller rocker is required for changing the connecting conveyor of a stacker from one type of use to another, and the changeover can be carried out by unskilled personnel (Hoffmann col. 1 ll. 55-57 and col. 3-5). Applicant notes with interest that the roller rocker is mounted alternately on a

tracked vehicle or on a delivery conveyor unit, but not both at the same time. Thus, while the super-structure raises the connecting conveyor off the crawler-type vehicle, the roller rocker is free to move from the crawler-type vehicle to the delivery conveyor unit. Hoffman clearly did not foresee an occasion to use the crawler-type vehicle after the free end of the connecting conveyor is mounted on the delivery conveyor unit.

The Kay reference is drawn to a mobile conveyor to improve the efficiency of transferring and evenly distributing overburden from an excavation site to a spoil pile area at a uniform depth (Kay col. 3 line 63 to col. 4 line 2). Kay is addressing both a decrease in the amount of time to transfer the overburden as well as reducing or eliminating the amount of time necessary to grade or level off the spoil pile area in order to comply with applicable federal regulations (Kay col. 4 ll. 59-65). The mobile conveyor includes a frame and a continuous belt conveyor mounted on a boom that are all mounted above a single self-propulsion unit, pivotal about a vertical axis generally through the centerline of the self-propulsion unit, and pivotal about a horizontal axis in order to raise and lower the discharge end of the conveyor (Kay Fig. 2, col. 4 ll. 3-14 and 49-56, and col. 5 ll. 14-25). Kay teaches the center of gravity of the mobile conveyor is located over the area defined by the propulsion unit, so the entire mobile conveyor is self-propelled on only the single self-propulsion unit (Kay Fig. 1 and col. 4 ll. 3-4 and col. 7 ll. 26-31). The mobile conveyor includes one or more stabilizers that are extended to the ground in order to support the balancing of the apparatus when overburden material is placed in the hopper assembly but not while the apparatus is moving, and clearly requires the stabilizer to be stowed during transport requiring additional downtime (Kay col. 10 ll. 48-55, col. 10 ll. 64-67). The mobile conveyor described by Kay is used for relatively light duty and not intended for continuously conveying overburden, but rather is intended to be used with overburden moving

units such as front-end loaders with a bucket capacity on the order of about five to ten cubic yards (Kay col. 5 ll. 26-30).

The Office Action asserts in paragraph 5 that the Kay reference teaches a mobile conveyor module with a hopper and chute at opposite ends on steerable rolling stock. Applicant understands from this assertion that the Office Action associates the material transfer apparatus of Kay with the mobile conveyor module 87 of the present invention as claimed. Applicant respectfully submits that the material transfer apparatus of Kay is used to receive overburden removed from a mining area and evenly distributing the overburden on a spoil pile with a substantially uniform and selected depth (Kay col. 3 line 63 to col. 4 line 2). Kay discloses that this uniform distribution of overburden on the soil pile is possible due to the fully articulatable discharge end, which describes rotational and vertical movement of the distal end over an area of the soil pile to evenly distribute the overburden (Kay col. 4 ll. 4-14 and col. 14 ll. 38-52). As such, the material transfer apparatus described by Kay could be more closely identified with the stacker 41 included in the claimed system, and not the mobile conveyor module as described and claimed in the Independent Claims 1 and 10 of the present invention.

The material transfer apparatus of the Kay reference is not suitable for use as a mobile conveyor module for feeding aggregate to a mobile tripper module as suggested since a purpose of the mobile conveyor module is to supply aggregate to a portion of the mobile tripper module 53 through a chute at the discharge end which is displaced laterally relative to the mobile tripper module (Specification page 11 ll. 1-3). Although the hand-annotations supplied in the Office Action on Figure 2 of Kay indicate the discharge end acts as a chute end, Applicant respectfully submits that such a discharge end is unsuitable for supplying aggregate to another conveyor due to excessive spillage without an actual chute to narrow the target field. Applicant respectfully

traverses this assertion regarding the chute end since Kay does not teach an actual chute, but rather a discharge end 66 of the conveyor boom 26 (Kay col. 8 ll. 44-45). This discharge end lacks the downward directional control afforded by the discharge chutes (57, 91) taught by the present disclosure (Figs. 3 and 5 and Specification pages 9 ll. 14-15 and 10 ll. 4-5). The presence of the chutes allows the present invention to more efficiently transfer aggregate between the modules with less actual loss, and greater immunity to wind dispersion effects, for example.

Finally, Kay teaches that the material transfer apparatus disclosed is adapted for use with smaller and more economical excavating devices such as excavators or front-end loaders (Kay col. 4 ll. 20-32, col. 5 ll. 54-56, and col. 14 ll. 29-32). Kay does not teach use of their apparatus with another conveyor of any kind, and appears to teach away from use with any device other than a small loader or other excavating device with increased speed and mobility (Kay col. 4 ll. 32-35). Kay does not teach a combination with another conveyor is possible or beneficial. Hence, there is no motivation to combine the material transfer apparatus of Kay with a fully articulatable distal end to supply another conveyor. To combine the material transfer apparatus of Kay with the stacker as suggested, and presuming another conveyor that is an immediate source of aggregate to supply both, describes a system that is different from that claimed in the present invention. Although rearrangement of different elements is possible, the particular claimed arrangement cannot be taught using the material transfer apparatus of Kay and the stacker 41 as discussed above.

The Office Action asserts in paragraph 5 that the Hoffmann reference teaches a mobile tripper module as claimed in the present invention. Applicant understands from this assertion that the Office Action associates the stacker with connecting conveyor of Hoffmann with the

mobile tripper module 53 of the present invention as claimed (Hoffmann col. 1 ll. 41-60). Applicant respectfully submits that the stacker with connecting conveyor taught by Hoffman is disclosed as receiving material from a tripper car that is not equivalent to a mobile tripper module 53. The tripper car of Hoffmann is disclosed as having only a single conveyor belt to transfer material in a single longitudinal direction (Hoffmann Figure 2). Conversely, the mobile tripper module 53 of the present invention is disclosed as receiving aggregate onto a main belt and then discharging the aggregate on either side of the tripper module in a lateral direction (Specification page 9 ll. 5-8). Further, the mobile tripper module 53 of the present invention is disclosed as being displaced laterally 107 from the mobile conveyor module 87 (Figure 6 and Specification page 11 ll. 1-3).

Independent Claims 1, 10, and 19 are amended to more clearly distinguish over the cited art by providing that the mobile tripper module discharges aggregate laterally on either side of the mobile tripper module (Figure 3 and Specification page 9 ll. 6-8 and page 11 ll. 1-3).

Applicant's admission by labeling the drawing Figs. 2 and 4 as PRIOR ART only identifies the labeled items that are each an embodiment of a single element of the plurality of elements comprising the system of Claim 1. FIG. 2 is a perspective illustration of an embodiment of a mobile radial stacker which is known in the art. Similarly, FIG. 4 is a perspective illustration of an embodiment of a bridge stacker or mobile stacking conveyor which is known in the art. For example, Claim 1 is drawn to a system that incorporates a new mobile conveyor belt module and a new mobile tripper module together with a known stacker in order to accomplish a new function. The known stacker is only one embodiment of the third element of Claim 1. Similarly, the known bridge stacker or mobile stacking conveyor is only one embodiment of the third element of Claim 10 and the second element of Claim 19.

The Office Action asserts that it would have been obvious to "rearrange" known elements in order to construct the present invention. Applicant respectfully traverses this assertion. Even if such a combination would result in the present invention, "obvious to try" is not sufficient without a teaching in the art towards such a combination as well as an expectation of success. As described above, neither Kay nor Hoffman offer a teaching towards a combination that has all the elements of the present invention as claimed. Applicant respectfully traverse any contention that there is any teaching in either the Kay or the Hoffmann references that would lead a person of ordinary skill in this field to seek such a combination, other than the teaching of the present disclosure.

Our reviewing courts have often advised the Patent and Trademark Office that it can satisfy the burden of establishing a *prima facie* case of obviousness only by showing some objective teaching in either the prior art, or knowledge generally available to one of ordinary skill in the art, that "would lead" that individual "to combine the relevant teachings of the references." *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). *In re Newell*, 891 F.2d 899, 13 USPQ2d 1248 (Fed. Cir. 1989). Accordingly, an examiner cannot establish obviousness by locating references which describe various aspects of a patent application's invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done.

Ex Parte, Levengood, 28 U.S.P.Q. 1300, 1302 (Fed. Cir. 1993).

The independent Claims 1, 10, and 19 are drawn each to a system comprising elements with specific features and that cooperate to form a novel mobile conveyor system. Based on the above remarks, Applicant submits that the cited references cannot be combined as suggested, and even if combined to render obvious the present invention as presently claimed. Claims 1, 10, and 19 are amended to clearly distinguish over the cited art by providing that the mobile tripper

module discharges aggregate laterally on either side of the mobile tripper module (Figure 3 and Specification page 9 ll. 6-8 and page 11 ll. 1-3).

Regarding dependent Claims 2, 20, and 21, Applicant respectfully submits that the plurality of elements are used to form an aggregate supply conduit for feeding the system of Claims 1 and 19 like links in a chain (Fig. 10 and Specification page 14 ll. 1-2). Further, the elements presented depend from independent Claim 19 that is believed allowable based on the above arguments. Applicant respectfully submits that the remaining claims are believed in condition for allowance since they each depend directly or indirectly from the independent Claims discussed above.

Similarly, regarding dependent claims 5, 9, 14, 17, 25 and 29, Applicant respectfully submits that the features claimed depend from the independent claims 1, 10, and 19 described above and are believed allowable based on the arguments regarding the independent claims.

Applicant respectfully requests this rejection be withdrawn.

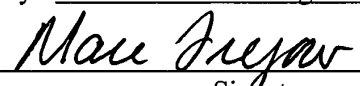
Claims 47-50 are newly added and are supported in the specification as described below. Independent Claim 47 is drawn to a structure similar to Claim 19 wherein the mobile belt conveyor module has a truss structure and is mounted for movement with respect to the ground on a pair of steerable rolling stock at both ends of the truss structure (Fig. 5 and Specification page 10 ll. 6-8). Similarly, the mobile tripper module has a truss structure and is mounted on a pair of steerable rolling stock at both ends of the truss structure (Fig. 3 and Specification page 9 ll. 8-10). Dependent Claim 48 specifies the rolling stock can be either wheels or crawler tracks (Specification page 9 ll. 8-9 and page 10 ll. 7-8). Dependent Claim 49 specifies the rolling stock are steerable through about 180 degrees and driveable through 360 degrees (Specification page 9



ll. 10-13 and page 10 ll. 8-10). Dependent Claim 50 specifies the aggregate is discharged laterally using a reversible tripper car that is movable along the truss structure (Specification page 9 ll. 6-8

It is believed that the case is now in condition for allowance, and an early notification of the same is requested. If the Examiner believes that a telephone interview will help further the prosecution of this case, he is respectfully requested to contact the undersigned attorney at the listed telephone number.

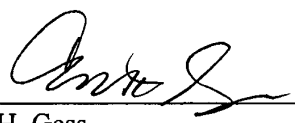
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By: Marc Fregoso  
  
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Dated: February 19, 2004

Very truly yours,

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